IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 17165 of 2007(R)

PETITIONER:

SUNIT.M.V., PUSHPANJALI,
DILKUSH LANE, THRISSUR.

BY ADV. SRI.VAKKOM N.VIJAYAN
SMT.VINITHA PRASANNAN
SRI.P.ANIYAN
SRI.A.S.SACHIN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, THRISSUR.

2. THE TAHSILDAR (R.R.), THRISSUR.

3. T.K.SURESH, THANDASSERY HOUSE, THRIKKUMARANKUDAM ROAD, THRISSUR.

BY G.P. SRI. BASANT BALAJI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/06/2007, ALONG WITH WPC NO. 24955 OF 2003 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 17165/2007 & 24955/2003

Dated this the 29th day of June, 2007

C.R.

JUDGMENT

In these connected cases, the common third respondent was defaulter for abkari dues to the tune of Rs. 3,66,507/- for the year 1989-90. Revenue recovery notice is stated to be served on the third respondent on 2.6.1990. However, third respondent's one item of property was sold in court auction pursuant to decree obtained by petitioner in WPC 17165 of 2007 in which the property was purchased by the plaintiff-petitioner himself. Suit based on a dishonoured cheque was filed as OS No. 1079 of 1992 and it was decreed on 30.5.2000. It is seen from the decree produced that it is a compromise decree whereunder the third respondent undertook to pay the suit amount with 18% interest. In view of the decree and sale of property of the defaulter (third respondent) to petitioner in WPC 17165 of 2007, that property was not available before the recovery authorities for recovery of abkari dues. Therefore the property purchased by the petitioner in

WPC 24955 of 2003 from third respondent was proceeded against. Under interim orders of this Court, petitioner in WPC 24955 of 2003 remitted the entire arrears and therefore no more arrears are due from the third respondent warranting further recovery. However, this Court has held that if the petitioner in WPC 24955 of 2003 succeeds in the matter, refund will be ordered by this Court.

2. After hearing all the parties, I feel the matter cannot be finally decided by this Court because enquiry and findings on various facts with reference to evidence and documents are involved. What is required to be examined is whether the decree obtained by the petitioner in WPC 17165 of 2007 which is a compromise decree is the result of collusive deal between the petitioner in that WP and third respondent. On the face of it, the genuineness of the decree has to be doubted because of the huge rate of interest agreed to be paid by the third respondent in the compromise decree. Moreover, the property is purchased in auction by the plaintiff himself, i.e., the petitioner in that WPC. Since revenue recovery notice was already served on the defaulter, there is a charge in respect of the property under Section 44 of the RR Act and in that event, the sale by court in auction can be declared invalid and that property can be proceeded against for

recovery. Position is the same in respect of sale of property made by the defaulter to the petitioner in WPC 24955 of 2007 also because sale in that case took place in 1993, that is after service of revenue recovery notice on the third respondent. It is seen that earlier claim petition filed by the petitioner in WPC 17165 of 2007 is still pending before the District Collector.

3. The W.Ps. are accordingly disposed of with the following directions. The second respondent will go through the records and verify whether solvency bond executed by the third respondent creates charge on the two items of properties purchased by petitioners in both the W.Ps. If the properties are covered by solvency bond, then the sale of such properties in court auction and the sale by the defaulter are both subject to charge and he will declare so. If there is no charge created by solvency bond, then the second respondent will examine whether the attachment and sale in court auction in one case and the sale by the defaulter to the petitioner in the other case were made after service of RR notice under Section 44 of the Revenue Recovery Act and if so, he will again declare the transactions as subject to charge in favour of the State. If in either case both the properties are found to be subject to charge, then the second respondent will proceed for recovery of 50% of

the amount remitted by petitioner in W.P.24955/2003 from the petitioner in W.P. 17165/2007 and pay the same to the petitioner in W.P. 24955/2003 so that the liability is shared equally by both who are beneficiaries of illegal transactions.

4. If on enquiry it is found that the court auction conducted in W.P. 17165/2007 is based on a collusive decree and the purchase by the petitioner in W.P. 24955/2003 is not subject to charge, then the second respondent will attach and sell the property purchased by the petitioner in W.P. 17165/2007 in court auction that originally belonged to the defaulter and recover the entire arrears remitted by the petitioner in the other W.P. and pay the said amount to the petitioner in W.P. 24955/2003 after recovering collection charges. The Tahsildar is directed to comply with the above directions within a period of four months from date of production of copy of this judgment by petitioners.

(C.N.RAMACHANDRAN NAIR)
Judge